

Message Text

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C O N F I D E N T I A L STATE 199452

MANILA FOR USDEL, CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: REMOVAL OF PROPER-
TY

REFS: A. MANILA 10707, USDEL 142 DTG 211035Z JUL 76

B. STATE 181589 DTG 221934Z JUL 76

C. STATE 165071 DTG 021747Z JUL 76

D. BAGUIO 54 DTG 250918Z JUN 76

1. YOUR REQUEST PARA 3 REF A FOR INFORMATION ON PRACTICES
IN OTHER COUNTRIES FOR DISPOSAL OF EXCESS PROPERTY HAS
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LED US BEYOND GUIDANCE OFFERED REF B INTO A CLOSER

EXAMINATION OF EXACTLY THE SORT OF PROCEDURES WE WISH TO OBTAIN PURSUANT TO PARA 4 US ARTICLE XVII APPROVED REF C.

2. IT IS OUR UNDERSTANDING THAT EXISTING PROPERTY DISPOSAL PRACTICES IN RP ARE BASED UPON INFORMAL ARRANGEMENTS AND PROVIDE USG CONSIDERABLY MORE FLEXIBILITY THAN PROPERTY DISPOSAL AGREEMENTS ELSEWHERE. WE WOULD WISH TO MAINTAIN THIS FLEXIBILITY INsofar AS PRACTICABLE AND CONSISTENT WITH PROPER PHIL RIGHT TO APPROVE OR DISAPPROVE OF SALE IN RP.

3. APPROVED LANGUAGE IS GENERALLY SIMILAR TO THAT OF PROPERTY DISPOSAL AGREEMENTS ELSEWHERE, BUT ONLY WITH RESPECT TO THE PROCEDURES WHICH WOULD APPLY ONCE THE USG HAS DECIDED NOT TO DISPOSE OF THE PROPERTY OUTSIDE OF RP. PREVIOUSLY APPROVED LANGUAGE WAS INTENDED TO PRESERVE USG RIGHT TO DISPOSE OF PROPERTY ELSEWHERE UNTIL USG INFORMS GOP THAT PROPERTY IS EXCESS AND AVAILABLE IN THE PHILIPPINES AND UNTIL WE HAVE AGREED ON TERMS AND CONDITIONS FOR THE SALE. WE ALSO INTENDED TO RETAIN USG OPTION TO REMOVE THE PROPERTY OR OFFER IT FOR SALE OUTSIDE RP AT ANY TIME PRIOR TO CONCLUSION OF AN AGREEMENT FOR ITS DISPOSAL IN THE PHILIPPINES. WE MUST BE SATISFIED THAT, IN THE EVENT A SALE CANNOT BE CONCLUDED WITH THE GOP, E.G. BECAUSE OF DISAGREEMENT ON PRICE, USG HAS RESERVED THE RIGHT TO REMOVE THE PROPERTY FROM RP OR TO SELL IT IN RP TO ANOTHER BUYER. IN THIS LATTER REGARD, WE NOTE THAT THE SUBJECT OF SALES TO COMMERCIAL FIRMS IN RP AFTER GOP DECLINES TO PURCHASE PROPERTY IS NOT ADDRESSED IN US DRAFT. CURRENTLY THESE SALES ARE ACCOMPLISHED THROUGH INFORMAL AGREEMENT. AS A MINIMUM WE DESIRE TO SELL TO COMMERCIAL FIRMS FOR RE-EXPORT IN THE EVENT GOP DOES NOT ELECT TO PURCHASE PROPERTY. FINALLY, WE MUST RETAIN USG OPTION TO SCREEN AND WITHDRAW EXCESS MATERIAL REQUIRED BY US FORCES.

4. ON AN FYI BASIS WE ARE PROVIDING FOR YOU IN PARA 6 BELOW A MODEL AGREEMENT FOR PROPERTY DISPOSAL WHICH WAS STAFFED INFORMALLY WORLDWIDE WITHIN DEFENSE SUPPLY AGENCY. THIS MODEL MAY PROVE USEFUL BACKGROUND TO YOU
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SHOULD THE PHILS BEGIN TO PRESS YOU FOR SPECIFIC PROCEDURES. WHILE, AS EMPHASIZED IN PARA 2 ABOVE, WE WISH TO MAXIMIZE OUR FLEXIBILITY IN RP, WE NOTE THAT THE MODEL IS NOT UNFAVORABLE, AND IS IN SOME RESPECTS HELPFUL, TO US. IN THIS REGARD, FOR INSTANCE, WE NOTE THAT THE RESTRICTION AGAINST PRIVATE FIRMS OR INDIVIDUALS ACTING ON BEHALF OF THE HOST GOVERNMENT SEEKS TO AVOID PROBLEMS THAT HAVE ARISEN ELSEWHERE AND COULD PERHAPS BE USEFUL

TO US IN RP.

5. WE HAVE SOUGHT TO LIST FOR YOU WASHINGTON REQUIREMENTS FOR A PROPERTY DISPOSAL SYSTEM IN RP. WE ALSO SUGGEST YOU CONTACT MAJ. L. M. SNELGROVE, COMMANDER OF THE DEFENSE PROPERTY DISPOSAL DETACHMENT AT SUBIC, FOR A MORE THOROUGH BRIEFING ON EXISTING PRACTICES AND FOR POSSIBLE ADDITIONAL REQUIREMENTS FROM THE WORKING LEVEL. WE SOLICIT YOUR COMMENTS AS TO WHETHER PHILS MAY BE PREPARED TO PERMIT SALES TO COMMERCIAL FIRMS TO CONTINUE AND, IF SO, WHETHER IN YOUR VIEW WE CAN SUCCESSFULLY NEGOTIATE LANGUAGE TO THAT EFFECT. WITH REGARD TO RETAINING CERTAIN EXCESS MATERIAL REQUIRED BY US FORCES WE NOTE THAT ROMUALDEZ, IN COMMENTING ON PARA 6 PHIL DRAFT ARTICLE XVIII (PARA 9 REF D), INDICATED UNDERSTANDING THAT USG AGENCIES WOULD HAVE PRIORITY OVER GOP RIGHT OF FIRST REFUSAL. WE SEEK CONFIRMATION OF THIS UNDERSTANDING UNDER US DRAFT. FINALLY WE WELCOME YOUR COMMENTS ON ALL OTHER PERCEIVED REQUIREMENTS AND THE EXTENT TO WHICH THEY CAN OR SHOULD BE EXPLICITLY PROTECTED IN THE AGREEMENT, INCLUDING, IF NECESSARY IN YOUR VIEW, A RESTRICTION AGAINST PRIVATE AGENTS ACTING ON BEHALF OF THE GOP.

6. MODEL AGREEMENT TEXT FOLLOWS: QUOTE

A. THE GOVERNMENT OF (BLANK) CONSENTS TO THE DISPOSAL BY SALE OF PROPERTY OWNED BY THE UNITED STATES GOVERNMENT (HEREAFTER REFERRED TO AS THE USG) LOCATED IN (BLANK) AS MAY BE DECLARED EXCESS TO THE REQUIREMENTS OF THE USG. SALES WILL BE CONDUCTED BY THE USG REPRESENTATIVES UNDER THE CONTROLS OUTLINED BELOW.

B. THE USG, WHEN PLANNING TO DISPOSE OF EXCESS PROPERTY
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AND EQUIPMENT IN (BLANK) SHALL SUBMIT A SPECIFIED NUMBER OF COPIES OF THE LIST OF MATERIAL TO THE DESIGNATED AGENCY OF THE (BLANK) GOVERNMENT. THE LIST OF MATERIAL SHALL CONSIST OF BROAD CLASSES OF PROPERTY FOR SMALL ITEMS BUT LIST MAJOR ITEMS INDIVIDUALLY BY SERIAL NUMBER OR OTHER IDENTIFICATION. SMALL ITEMS SHALL BE LISTED, AS AN EXAMPLE, AS "MISCELLANEOUS AUTOMOTIVE EQUIPMENT" OR "MISCELLANEOUS ELECTRICAL EQUIPMENT." MAJOR ITEMS SHALL BE LISTED, FOR EXAMPLE AS "TRUCK, 5 TON, MULTI-FUEL, MANUFACTURED BY GENERAL MOTORS, WITH FOLLOWING MAJOR PARTS MISSING: (LIST PARTS).

C. THE (BLANK) GOVERNMENT SHALL HAVE THE RIGHT OF PRIORITY OF PURCHASE OF ALL OR ANY PART OF SUCH EXCESS PROPERTY AT PRICES AND TERMS TO BE AGREED UPON BY NEGO-

TIATION. THE (BLANK) GOVERNMENT SHALL CONSIDER ON A LIST-BY-LIST BASIS THE DESIRABILITY OF AUTHORIZING, TOTALLY OR PARTIALLY, THE IMPORTATION OF SUCH EXCESS PROPERTY. THE LISTS OF ITEMS SUBMITTED FOR SALE SHALL BE REVIEWED AND RETURNED TO THE USG SALES OFFICE WITHIN 30 DAYS FROM DATE OF RECEIPT. THE EDITED LISTS SHALL INDICATE THE ITEMS THE (BLANK) GOVERNMENT DESIRES TO PURCHASE, THE NAME AND PHONE NUMBER OF THE (BLANK) GOVERNMENT REPRESENTATIVE RESPONSIBLE FOR EXECUTING THE PURCHASE AND THE AGENCY INVOLVED. PRIVATE FIRMS OR INDIVIDUALS SHALL NOT BE PERMITTED TO ACT FOR THE (BLANK) GOVERNMENT. THE EDITED LIST WILL ALSO INDICATE WHICH LOTS OR ITEMS ARE TO BE CLASSIFIED AS "IMPORT" LOTS AND WHICH LOTS MUST BE SOLD FOR EXPORT ONLY. ITEMS THAT THE (BLANK) GOVERNMENT DESIRES TO PURCHASE BUT ON WHICH A FIRM SALES PRICE HAS NOT BEEN AGREED UPON SHALL BE OFFERED FOR SALE TO THE PUBLIC AFTER 30 DAYS. WHEN MUTUALLY AGREEABLE, THIS RIGHT OF PRIORITY MAY BE ACCOMPLISHED SIMULTANEOUSLY WITH PROVISION OF THE INVITATION FOR BIDS PROVIDING THE IMPORTATION MATTER HAS BEEN AGREED TO BY GENERAL CATEGORIES OF PROPERTY.

D. THE SALES PROCEDURES WILL PROVIDE FOR CUSTOMS CONTROLS TO BE EXERCISED BEFORE RELEASE OF THE PROPERTY TO THE PURCHASER OR HIS REPRESENTATIVE. PROPERTY WILL ONLY BE RELEASED BY THE USG REPRESENTATIVE AFTER EVIDENCE OF CONFIDENTIAL

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PAYMENT OF CUSTOMS OR CUSTOMS AUTHORITY TO MOVE THE PROPERTY OUT OF THE USG INSTALLATION FOR EXPORT TO ANOTHER COUNTRY. THE (BLANK) WILL BE FURNISHED A COPY OF ALL SUCCESSFUL BIDDERS INDICATING ADDRESSES AND PRICES PAID ON EACH SALE. THE (BLANK) GOVERNMENT WILL RECEIVE COPIES OF ALL FINAL INVITATIONS FOR BIDS INDICATING THE TIME AND PLACE OF BID OPENING AND MAY SEND AN OBSERVER TO SUCH PUBLIC SALES OPENINGS.

E. PAYMENT BY CITIZENS OR FIRMS OF (BLANK) MAY BE MADE IN LOCAL CURRENCY. PAYMENT BY NON-RESIDENT FIRMS OR CITIZENS WILL NORMALLY BE MADE IN U.S. DOLLARS. HOWEVER, PAYMENT IN LOCAL CURRENCY BY NON-RESIDENT FIRMS OR CITIZENS WILL BE PERMITTED IF IT IS NOT IN CONFLICT WITH CURRENCY EXCHANGE REGULATIONS OF (BLANK). PROCEEDS OF SALE IN LOCAL CURRENCIES SHALL BE UTILIZED FOR USG EXPENDITURES IN (BLANK).

F. PROPERTY SOLD BY THE USG IN (BLANK) WILL NOT REQUIRE EXPORT LICENSES IF THE LOTS ARE IDENTIFIED FOR "EXPORT."

G. TRASH AND WASTE MAY BE SOLD WITHOUT RESTRICTION.

TRASH AND WASTE INCLUDES BUT IS NOT LIMITED TO SUCH ITEMS
AS EDIBLE FOOD WASTE, SCRAP WOOD AND LUMBER, GLASS CULLET,
SCRAP PAPER AND CARDBOARD.

H. SCRAP METALS AND OTHER SCRAP ITEMS THAT ARE GENERATED
ON A CONSTANT BASIS MAY BE SOLD BY TERM CONTRACT, E.G.
CONTRACTS LASTING SIX MONTHS OR MORE WITH ESTIMATED
GENERATIONS FOR THE LIFE OF THE CONTRACT. CUSTOMS TAXES
IF ANY WILL BE APPLIED ONLY TO THE WEIGHTS DELIVERED TO
THE CONTRACTOR AND NOT ON THE ESTIMATED GENERATION
FIGURE.

I. TO INSURE STANDARDIZATION OF PROCEDURES AND UNDERSTAND-
ING OF SUCH PROCEDURES A WRITTEN STANDARD OPERATING
PROCEDURE (SOP) WILL BE DRAWN UP IN BOTH LANGUAGES AND
SIGNED BY THE OPERATING OFFICIALS OF BOTH COUNTRIES.
MODIFICATION OF THIS AGREEMENT MAY BE REQUESTED AT ANY
TIME.

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J. THIS DISPOSAL AGREEMENT MAY BE TERMINATED AFTER 90
DAYS NOTICE BY EITHER PARTY UPON WRITTEN NOTICE. IT MAY
BE MODIFIED AT ANY TIME BY WRITTEN REQUEST AND AGREEMENT
BY BOTH PARTIES. UNQUOTE.

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